

### **Remarks**

Claims 1-20 are pending in the present application. Claims 1-20 are rejected under 35 U.S.C. 102(b).

Claims 1- 10 are amended to include the limitation "the concentrate does not comprise a low melt viscosity resin." Claim 19 is amended to include the limitation "wherein the copolymer does not comprise a low melt viscosity resin." The antecedent basis for this limitation is found on page 8, ll. 19-22 of the Specification which states: "In further aspects, the concentrate does not comprise a low melt viscosity resin. By 'low melt viscosity resin,' it is meant those materials described in detail in U.S. Pat. No. 5,670,561, as well as any materials that would be recognized by one of ordinary skill in the art to be substitutable therefore." Claim 1 is further amended to include the limitation that the concentrate "is adapted to provide a polyester composition having a moisture content of less than about 0.1 wt. % as measured by total weight of the polyester composition when the concentrate is combined with a base polyester." The antecedent basis for this latter amendment is found on p. 10, ll. 17-24 of the Specification. Claims 2, 12, and 19 are amended to include the chemical names for the abbreviations "EMA, EMMA, EEA, EBA or EBMA" which are found on p. 8, ll. 3-8 of the Specification. Claims 7 and 11 are amended to replace "I.V." with "inherent viscosity" as suggested by the Examiner. Claim 19 is further amended to include "one or more colorants" as a component of the copolymer. No new matter is added by these amendments.

The present invention provides a concentrate for coloring a base polyester which includes one or more colorants and from about 20 wt. % to about 80 wt. % of one or more copolymers. The copolymers include one or more of olefin/acrylate copolymer or olefin/methacrylate copolymer. The present invention overcomes many of the problems in the prior art by specifically excluding low melt viscosity resins (such as waxes). Such problems include the premature melting at the feed throat, obstruction of resin flows, and excessive screw slippage. (Specification, p. 2, ll. 25-28.) Moreover, the processing of two materials

(i.e., the low viscosity resin and the copolymer) increases the process complexity. (Specification, p. 3, ll. 10-12.) Finally, the concentrate of the present invention when combined with a base polyester provides a polyester composition having a moisture content of less than about 0.1 wt. % as measured by total weight of the polyester composition.

**a. Rejection Under 35 U.S.C. §112**

Claims 2, 7, 11, 12, and 19-20 are rejected under second paragraph of 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. These claims have been amended as suggested by the Examiner to remove this indefiniteness.

Claims 2, 12, and 19 have been amended to replace the abbreviations "EMA, EMMA, EEA, EBA or EBMA" with the chemical names as suggested by the Examiner.

Claims 7 and 11 are amended to replace "I.V." with "inherent viscosity" as suggested by the Examiner.

Claim 19 is amended to include "one or more colorants" as a component of the copolymer thereby clarifying claim 19 as requested by the Examiner.

**a. Rejection Under 35 U.S.C. §102(b)**

Claims 1-7, 9-16, and 18-20 are rejected under 35 U.S.C. §102(b) as being anticipated by Petiniot et al. (U.S. Patent Application No. 2001,0049424).

Applicants respectfully disagree with the Examiner for the reasons set forth below. Petiniot does not anticipate the present invention because Petiniot does not disclose every element of the invention. (see for example, *Akzo N.V. v. United States Int'l Trade*

*Comm'n*, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987).)

Petiniot discloses:

masterbatch composition comprising up to 85% by weight of at least one filler, up to 25% by weight of at least one viscosity modifier; and a balance by weight of a **styrene butadiene styrene block copolymer (SBS)** as a carrier resin.

Petiniot (para. 9), *emphasis added*.

Petiniot discloses a master batch composition which includes a styrene butadiene block copolymer. In contrast, the present invention does not include such a copolymer. Instead, the present invention provides a concentrate which includes an olefin/acrylate copolymer or olefin/methacrylate copolymer (amended claims 1, 10, and 19). Styrene butadiene styrene block copolymers are not olefin/acrylate or olefin/methacrylate copolymers since these copolymers are not acrylated (or methacrylated) and must contain a styrene residue which is not present in the composition of the present invention. Amended claim 19 provides a list of such olefin/acrylate and olefin/methacrylate copolymers. Moreover, Petiniot does not provided the limitation of amended claims 1, 10, and 19 in which a low melt viscosity resin is excluded from the concentrate composition nor does Petiniot appreciate the importance of this exclusion in adding color to polyester resins. As pointed out in the specification, the exclusion of such low melt viscosity resins advantageously allows for an improved process since low melt viscosity waxy materials can "melt prematurely at the feed throat and create difficulties during processing such as obstructing flow or causing excessive screw slippage." (Specification, p. 2, ll. 25-28 ) Moreover, the processing of two material (i.e., the low viscosity resin and the copolymer) increases the processing complexity. (Specification, p. 3, ll. 10-12 )

Accordingly, since Petiniot does not anticipate amended independent claims 1, 10, and 19, claims 2-7, 9, 11-16, 18, and 20 which depend from these claims are also not anticipated.

Claims 1-20 are rejected under 35 U.S.C §102(b) as being anticipated by Scheibelhoffer et al. (U.S. Patent No. 5,670,561).

Applicants respectfully disagree with the Examiner for the reasons set forth below. Scheibelhoffer does not anticipate the present invention because Scheibelhoffer does not disclose every element of the invention. (see for example, *Akzo N.V. v. United States Int'l Trade Comm'n*, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987).) Scheibelhoffer discloses a color concentrate which includes a "a low melt viscosity resin or mixture of resins." (Scheibelhoffer, col. 2, ll. 38-57.) The present invention does not include such resins as clarified by amended independent claims 1, 10, and 19. As set forth above, the exclusion of such low melt viscosity resins lead to certain material and processing advantages. Accordingly, neither independent claims 1, 10, and 19 nor dependent claims 2-9, 11-18, and 20 which exclude a low melt viscosity resin are anticipated by Scheibelhoffer.

Claims 1-7, 9-16, and 18-20 are rejected under 35 U.S.C §102(b) as being anticipated by Phillips et al. (U.S. Patent No. 5,686,515).

Applicants respectfully disagree with the Examiner for the reasons set forth below. Phillips does not anticipate the present invention because Phillips does not disclose every element of the invention. Phillips provides a method preparing colored polyethylene terphthalate which includes a wax dispersant. (Phillips, col. 4, ll. 4-11.) For the same reasons as set forth above, amended independent claims 1, 10, and 19 are not anticipated by Phillips because low melt viscosity resins such as waxes are explicitly excluded from the present invention. Accordingly, neither independent claims 1, 10, and 19 nor dependent claims 2-7, 9, 11-16, 18, and 20 which exclude a low melt viscosity resin are anticipated by Phillips.

Claims 1, 3-11, and 13-18 are rejected under 35 U.S.C §102(b) as being anticipated by Siegle et al. (U.S. Patent No. 3,766,126).

Applicants respectfully disagree with the Examiner for the reasons set forth below. Siegle does not anticipate the present invention because Siegle does not disclose every element of the invention. Siegle discloses a color concentrate which includes a thermoplastic amine polymer. (Siegle, col. 2, ll. 54-57.) Siegle does not disclose a color concentrate that

includes a copolymer selected from olefin/acrylate or olefin/methacrylate copolymers as required by the present invention. Moreover, the present invention does not include a thermoplastic amine polymer as required by Siegle. Accordingly, Siegle does not anticipate independent claims 1, 10, and 10 nor dependent claims 3-9, 11, 13-18.

Claims 1-3 are rejected under 35 U.S.C §102(b) as being anticipated by Rondy et al. (U.S. Patent No. 5,824,731).

Applicants respectfully disagree with the Examiner for the reasons set forth below. Rondy provides a carbon black concentrate that include a thermoplastic and a reclaim carbon black. (Rondy, col. 6, ll. 11-12.) Claim 1 is amended to include the following limitation from claim 6 (though not explicitly claiming the polyester composition) - "adapted to provide a polyester composition having a moisture content of less than about 0.1 wt. % as measured by total weight of the polyester composition when the concentrate is combined with a base polyester." Since claim 6 is not rejected as anticipated by Rondy, amended claim 1 cannot be anticipated by Rondy. Accordingly, claims 2 and 3 which depend from claim 1 are also not anticipated by Rondy.

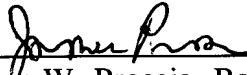
### **Conclusion**

Applicants have made a genuine effort to respond to each of the Examiner's rejections in advancing the prosecution of this case. Applicants believe that all formal and substantive requirements for patentability have been met and that this case is in condition for allowance, which action is respectfully requested. If a telephone or video conference would help expedite allowance or resolve any additional questions, such a conference is invited at the Examiner's convenience.

A check in the amount of \$110.00 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

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